UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

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In the matter of:		
BERKLEE COLLEGE OF MUSIC Employer,		
	0300	
		Case No. 01-CA-089878
and	•	
BERKLEE FACULTY UNION, AFT, LOCAL 4412, AFT-MA, AFL-CIO Petitioner.	:*:	
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EMPLOYER'S MOTION TO STRIKE COUNSEL FOR THE GENERAL COUNSEL'S CROSS-EXCEPTIONS AND BRIEF IN SUPPORT OF CROSS-EXCEPTIONS

- 1. On September 20, 2013, Administrative Law Judge Susan Flynn issued her decision in the above-captioned case. Pursuant to Section 102.46(a) of the Rules and Regulations of the National Labor Relations Board, Berklee had 28 days to file exceptions to that decision and a supporting brief. This deadline was tolled for 16 days because of the Government Shutdown. Berklee was also granted, with the Claimants assent, a two week extension to file its exceptions. Berklee's Exceptions and Brief in Support of Exceptions were ultimately filed on November 18, 2013.
- 2. Any cross-exceptions were due on December 2, 2013. Section 102.46(e) of the Rules and Regulations states that "Any party who has not previously filed exceptions may, within 14 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, file cross-exceptions to any portion of the administrative law judge's decision, together with a supporting brief. . ." (emphasis added). The

last day on which exceptions could be filed was November 18, 2013. Therefore, under Section 102.46(e), the last day to file timely cross-exceptions was December 2, 2013.

- 3. Counsel for the General Counsel did not request an extension of time to file cross-exceptions. She did file a motion for an extension of time to file an answering brief in response to Berklee's exceptions. However, this motion does not mention cross-exceptions. Indeed, under the heading "What Document is Due" on her extension of time request, Counsel for the General Counsel wrote: "Answering Brief to Exceptions."
- 4. On January 6, 2014, Counsel for the General Counsel filed Cross-Exceptions and a Brief in Support Of Cross-Exceptions.
- 5. The Cross-Exceptions and Supporting Brief must be stricken for not conforming to the Rules and Regulations of the National Labor Relations Board. Counsel for the General Counsel did not file her cross-exceptions until January 6, 2014, over one month after the due date. She has never sought an extension to file her cross-exceptions after the deadline. Indeed, even now the Counsel for the General Counsel is not asking for more time, let alone giving any good cause explanation. It can be presumed that the Counsel for the General Counsel knows the rules of the agency and there is no excuse for this tardy filing. For these reasons, the cross-exceptions should be stricken in their entirety. See Section 102.114(d) of Rules and Regulations of the National Labor Relations Board (explaining that non-conforming papers filed with the Board may be rejected). Pursuant to 102.46(e), the Counsel for the General Counsel is not entitled to request permission at this late stage for a retroactive extension of time and, thus, if Counsel for the General Counsel attempts to do so in response to this motion, such a request should be denied.

BERKLEE COLLEGE OF MUSIC

By its attorneys,

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Dated: January 7, 2014

CERTIFICATE OF SERVICE

I, Rebecca J. Sivitz, hereby certify that on January 7, 2014 the above document was sent via email to counsel for the Union, Haidee Morris, General Counsel, AFTMA at hmorris@aftma.net and counsel for the General Counsel, Emily G. Goldman at Emily.Goldman@nlrb.gov.

Rebecca J. Sivitz